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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,010	01/25/2001	Cynthia M. Merkin	16356.583 (DC-02750)	5198
27683	7590	10/27/2003	EXAMINER	
HAYNES AND BOONE, LLP 901 MAIN STREET, SUITE 3100 DALLAS, TX 75202			LE, DIEU MINH T.	
			ART UNIT	PAPER NUMBER
			2184	

DATE MAILED: 10/27/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,010

Applicant(s)

MERKIN ET AL.

Examiner

Dieu-Minh Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 20 February 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Part III DETAILED ACTION

Specification

1. Claims 1-20 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that

was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable Aguilar et al. (US Patent 6,446,203 hereafter referred to as Aguilar) in view of Basu (US Patent 5,842,011).

As per claim 1:

Aguilar substantially teaches the invention. Aguilar teaches:

- a system comprising:
- a computer system including a processor and a memory [fig. 1, abstract, col. 1, lines 8-11 and col. 2, lines 64 through col. 3, line 20];
- retrieve a preboot image (*i.e., previous boot image*) and execute the preboot image (*i.e., previous boot image*) [fig. 3, col. 5, lines 31-47];
- detecting a status indication associated with a previous boot attempt by the computer system [col. 1, lines 67 through col. 2, lines 11];

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- in response to the status indication indicating a local boot attempt state [col. 2, lines 31-36 and col. 6, lines 13-15];
- retrieving a first boot mage and booting the computer system using the first boot image [col. 1, lines 35-67 and col. 4, lines 3-17].

Aguilar does not explicitly teach:

- first and second remote locations.

However Aguilar does disclose capability of:

- a method and system for selecting from multiple boot images to be loaded in a data processing system for booting a computer with one of multiple boot images [abstract, fig. 3, col. 1, lines 1-12 and lines 49-65]

comprising:

- a connectivity among multiple CPUs, boot device, memory system, and other computing devices [fig. 1-2, col. 2, lines 64 through col. 3, lines 20];
- first, second, and local boot images retrieved from multiple boot devices in responding to computer system (*i.e.*, *remote locations*) [fig. 3, col. 1, lines 55-63 and col. 2, lines 31-36];

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- a networking-based boot images to support distributed processor across a variety of products in a multiple platform, and/or client environment (*i.e.*, *remote locations*) [col. 4, lines 49 through col. 5, lines 6];
- a BIOS based boot image and a network based boot image are also available for boot image [col. 5, lines 44-46].

In addition, Basu explicitly teaches:

- a system and method for booting a client workstation from remote location over a network [abstract, fig. 4A-D, col. 2, lines 20-29];

comprising:

- booting computer system via remote boot procedure over a network [col. 2, lines 20-29];
- booting from client/server environment (*i.e.*, *remote location booting*) [col. 4, lines 3-14];
- a local booting from local image of the bootable code [col. 2, lines 37-40];

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made first, to realize the Aguilar's method and system for selecting from multiple boot images to be loaded in a data processing

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system for booting a computer with one of multiple boot images comprising **first, second, and local boot images retrieved from multiple boot devices in responding to computer system (i.e., remote locations)** as well as a networking-based boot images to support distributed processor across a variety of products in a multiple platform, and/or client environment (i.e., remote locations) as being the first and second remote locations as claimed by Applicant. This is because the Aguilar's method and system for selecting from multiple boot images to be loaded in a data processing does perform the computer booting over the networking (i.e., booting from remote locations) by multiple boot images in supporting the computer continuity operation. Aguilar clearly demonstrated the computer booting process, configuration, and networking within the computer process system; second, one would modify the Aguilar's method and system for selecting from multiple boot images to explicitly including the booting computer system via remote boot procedure over a network and booting from client/server environment (i.e., remote location booting) as taught by Basu's system and method for booting a client workstation from remote location over a network in supporting the computer data/system connectivity error/failure detection and restoration via the computer booting process over local and networking booting environment.

This modification would have been obvious because a person having ordinary skill in the art would have been motivated to do so to provide the computer systems connectivity with booting data/communication path error detection and correction (i.e., fault-resilient boot) via booting local and networking remote capability with a mechanism to enhance the computer booting configuration, performance, availability, and operation in ordering to providing an optimal booting or data/information error detection and correction system. It is further obvious because by utilizing this approach, the computer devices or systems with booting procedure or error detection and correction (i.e., booting locally and networking remotely) capabilities can be realized in:

- first, any error, or failure occurred within the computer system can be identified, detected, corrected via retrieving booting process, scheduling/access, data transmission control, and correct data execution via state information or status information;

- second, the computer systems can operate with a high reliability and flexibility environment which will correctly provide optimum data availability and transmission throughput among end user real-time communication and execution.

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As per claims 2-3:

Aguilar substantially teaches the invention. Aguilar teaches:

- a system comprising:
 - a computer system including a processor and a memory [fig. 1, abstract, col. 1, lines 8-11 and col. 2, lines 64 through col. 3, line 20];
 - in response to the status indication indicating a local boot successful state or an unknown state [col. 2, lines 31-36 and col. 6, lines 13-15];
 - a status indication associated with a previous boot attempt by the computer system [col. 1, lines 67 through col. 2, lines 11];

Aguilar does not explicitly teach:

- an administrator notification.

However Aguilar does disclose capability of:

- a method and system for selecting from multiple boot images to be loaded in a data processing system for booting a computer with one of multiple boot images [abstract, fig. 3, col. 1, lines 1-12 and lines 49-65]

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comprising:

- a connectivity among multiple CPUs, boot device, memory system, and other computing devices [fig. 1-2, col. 2, lines 64 through col. 3, lines 20];
- a means or a configuration menu (i.e., the administrator) for managing and setting indicator and boot sequence within the computer system for all of first, second, and local boot images retrieved from multiple boot devices in responding to computer system [fig. 3, col. 1, lines 55-63 and col. 2, lines 31-36] as well as a networking-based boot images to support distributed processor across a variety of products in a multiple platform, and/or client environment [col. 4, lines 49 through col. 5, lines 6].

In addition, Basu explicitly teaches:

- a system and method for booting a client workstation from remote location over a network [abstract, fig. 4A-D, col. 2, lines 20-29];

comprising:

- an operating system task used to performing the computer system booting scheduling, accessing remote booting, etc... (i.e., the administrator) [col. 3, lines 26-42]

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- booting computer system via remote boot procedure over a network [col. 2, lines 20-29];
- booting from client/server environment (*i.e.*, *remote location booting*) [col. 4, lines 3-14];
- a local booting from local image of the bootable code [col. 2, lines 37-40].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made first, to realize the Aguilar's method and system for selecting from multiple boot images to be loaded in a data processing system for booting a computer with one of multiple boot images comprising a means or a configuration memu (*i.e.*, the administrator) for managing and setting indicator and boot sequence within the computer system as being the an administrator notification as claimed by Applicant. This is because the Aguilar's method and system for selecting from multiple boot images to be loaded in a data processing does perform the configuration and management or administration computer booting over the networking (*i.e.*, booting from remote locations) by multiple boot images in supporting the computer continuity operation; second, one would modify the Aguilar's method and system for selecting from multiple boot images to

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explicitly including the **an operating system task used to performing the computer system booting scheduling, accessing remote booting, etc.. (i.e., the administrator)** along with booting computer system via remote boot procedure over a network and booting from client/server environment (*i.e., remote location booting*) as taught by Basu's system and method for booting a client workstation from remote location over a network in supporting the computer data/system connectivity error/failure detection and restoration via the computer booting process over local and networking booting environment.

This modification would have been obvious because a person having ordinary skill in the art would have been motivated to do so to provide the computer systems connectivity with booting data/communication path error detection and correction (*i.e., fault-resilient boot*) via booting local and networking remote capability with a mechanism to enhance the computer booting configuration, performance, availability, and operation in ordering to providing an optimal booting or data/information error detection and correction system.

As per claims 4-5:

Aguilar substantially teaches the invention. Aguilar teaches:

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- a system

comprising:

- a computer system including a processor and a memory [fig. 1, abstract, col. 1, lines 8-11 and col. 2, lines 64 through col. 3, line 20];
- in response to the status indication indicating a local boot successful state or an unknown state [col. 2, lines 31-36 and col. 6, lines 13-15];
- a status indication associated with a previous boot attempt by the computer system [col. 1, lines 67 through col. 2, lines 11];
- retrieving a first boot mage and booting the computer system using the first boot image [col. 1, lines 35-67 and col. 4, lines 3-17].
- **a BIOS based boot image and a network based boot image are also available for boot image [col. 5, lines 44-46].**

In addition, Basu explicitly teaches:

- a system and method for booting a client workstation from remote location over a network [abstract, fig. 4A-D, col. 2, lines 20-29];

comprising:

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- booting computer system via remote boot procedure over a network [col. 2, lines 20-29];
- booting from client/server environment (*i.e., remote location booting*) [col. 4, lines 3-14];
- a local booting from local image of the bootable code [col. 2, lines 37-40].

As per claims 6-7:

Aguilar substantially teaches the invention. Aguilar teaches:

- a system comprising:
 - a computer system including a processor and a memory [fig. 1, abstract, col. 1, lines 8-11 and col. 2, lines 64 through col. 3, line 20];
 - retrieve a preboot image (*i.e., previous boot image*) and execute the preboot image (*i.e., previous boot image*) [fig. 3, col. 5, lines 31-47];
 - retrieving a first boot mage and booting the computer system using the first boot image [col. 1, lines 35-67 and col. 4, lines 3-17].

Aguilar does not explicitly teach:

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- first and second servers and remote locations.

However Aguilar does disclose capability of:

- a method and system for selecting from multiple boot images to be loaded in a data processing system for booting a computer with one of multiple boot images [abstract, fig. 3, col. 1, lines 1-12 and lines 49-65]

comprising:

- a connectivity among multiple CPUs, boot device, memory system, and other computing devices [fig. 1-2, col. 2, lines 64 through col. 3, lines 20];
- first, second, and local boot images retrieved from multiple boot devices in responding to computer system (*i.e., remote locations*) [fig. 3, col. 1, lines 55-63 and col. 2, lines 31-36];
- a networking-based boot images to support distributed processor across a variety of products in a multiple platform, and/or clients environment (*i.e., remote/server locations*) [col. 4, lines 49 through col. 5, lines 6];
- a BIOS based boot image and a network based boot image are also available for boot image [col. 5, lines 44-46].

In addition, Basu explicitly teaches:

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- a system and method for booting a client workstation from remote location over a network [abstract, fig. 4A-D, col. 2, lines 20-29];

comprising:

- booting computer system via remote boot procedure over a network [col. 2, lines 20-29];
- booting from client/server environment (i.e., remote location booting) [col. 4, lines 3-14];
- a local booting from local image of the bootable code [col. 2, lines 37-40];

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made first, to realize the Aguilar's method and system for selecting from multiple boot images to be loaded in a data processing system for booting a computer with one of multiple boot images comprising first, second, and local boot images retrieved from multiple boot devices in responding to computer system (i.e., remote/server locations) as well as a networking-based boot images to support distributed processor across a variety of products in a multiple platform, and/or client environment (i.e., remote/server locations) as being the first and second remote locations as claimed by Applicant. This is because the

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Aguilar's method and system for selecting from multiple boot images to be loaded in a data processing does perform the computer booting over the networking (i.e., booting from remote locations) by multiple boot images in supporting the computer continuity operation. Aguilar clearly demonstrated the computer booting process, configuration, and networking within the computer process system; second, one would modify the Aguilar's method and system for selecting from multiple boot images to explicitly including the **booting computer system via remote boot procedure over a network and booting from client/server environment (i.e., remote location booting)** as taught by Basu's system and method for booting a client workstation from remote location over a network in supporting the computer data/system connectivity error/failure detection and restoration via the computer booting process over local and networking booting environment for the same reasons set forth as described in claim 1, *supra*.

As per claim 8:

Aguilar substantially teaches the invention. Aguilar teaches:

- a system comprising:

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- a computer system including a processor and a memory
[fig. 1, abstract, col. 1, lines 8-11 and col. 2, lines 64
through col. 3, line 20];
- a non-volatile memory configured to store status indication
[col. 1, lines 67 through col. 2, lines 14];
- in response to the status indication indicating a local
boot attempt state [col. 2, lines 31-36 and col. 6, lines
13-15].

As per claims 9-13:

These claims are the same as per claims 1-8. The only minor different is that these claims are directed to **computer program product** instead of the computer system including a processor and a memory as well as the method performed by a computer system as described in claims 1-8 and 14-20, respectively. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to realized that the article with **computer program product** is a necessary item for such communication devices including remote device or client-server networking system, more specifically, data communication or transmission booting among computer system and remote computer system or client-server system. Since the computer system and remote computer data transmission or client-server transmission

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obviously needs a means for instruction or code means or boot images resided within the **computer program product** for performing the data storing, receiving, detecting, tracking, monitoring, repairing, restarting, booting, and transmitting operation capabilities. Therefore, these claims are also rejected under the same rationale applied against claims 1-8 and 14-20, respectively.

As per claims 14-20:

Due to the similarity of claims 14-20 to claims 1-8 except for a method performed by a computer system steps (i.e., detecting a status indication step, retrieving a first boot image step, booting the computer system step, etc...) instead of a computer system including a processor and a memory capabilities ((i.e., detecting a status indication, retrieving a first boot image, booting the computer system, etc...); therefore, these claims are also rejected under the same rationale applied against claims 1-8. **In addition, all of the limitations have been noted in the rejection as per claims 1-8.**

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Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. A shortened statutory period for response to this action is set to expired THREE (3) months, ZERO days from the date of this letter. Failure to respond within the period for response will cause the application to be abandoned. 35 U.S.C. 133.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (703) 305-9408. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel, can be reached on (703)305-9713. The fax phone number for this Group is (703)746-7240.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 746-7239, (for formal communications
intended for entry)

Or:

(703) 746-7240 (for informal or draft
communications, please label "PROPOSED" or
"DRAFT")

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Hand-delivered responses should be brought to Crystal
Park II, 2121 Crystal Drive, Arlington. VA., Sixth
Floor (Receptionist).

A handwritten signature in black ink, appearing to read 'Dieu-Minh Thai Le', written in a cursive style.

**DIEU-MINH THAI LE
PRIMARY EXAMINER
ART UNIT 2184**

DML
10/20/03